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Enright, Richard E.

Address of
Richard E. Enright...

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[1920]

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Enright, Richard E

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Address of Richard E. Enright, police commissioner, at the dinner of the mayor's Public welfare committee, at the Waldorf-Astoria, October sixth, nineteen-twenty.

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— ADDRESS OF —

RICHARD E. ENRIGHT
POLICE COMMISSIONER

— AT THE DINNER OF THE —

Mayor's Public Welfare
Committee

At the Waldorf-Astoria
October Sixth, Nineteen-Twenty

ADDRESS OF
POLICE COMMISSIONER RICHARD E. ENRIGHT AT THE
DINNER OF THE
MAYOR'S PUBLIC WELFARE COMMITTEE AT THE
WALDORF-ASTORIA, OCTOBER 6, 1920.

The police power in a comprehensive sense embraces the system of internal regulation of a state or municipality by which it is sought not only to preserve the public order and to prevent crime, but also to establish, for the intercourse of citizen with citizen, those rules of good manners and good morals which are calculated to prevent a conflict of rights and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent with a like enjoyment of rights by others.

Criminal justice is that part of our law which appeals most strongly to the popular imagination, which nearly touches and concerns the average citizen or "man in the street." The blue-uniformed police officer is the only outward visible sign of an inward and real power; the "Rule of Law."

Courts of summary jurisdiction popularly called police or magistrates' courts may be said to be: The tribunals which in modern times, to many citizens, is the only visible and understood symbol of law and justice.

Under the Greater New York Charter, this Department is charged with the duty of enforcing all laws and ordinances as well as the prevention and detection of crime. In the performance of these very important functions of government, the Department is obliged to cooperate with all the courts, particularly those that are known as the Inferior Courts of this city.

There is ordinarily very little friction between these courts and the Police Department except in cases of arrest for violation of the laws relating to vice and gambling, and it is to this particular problem that I shall address myself in this paper.

There is latent in the minds of many people the idea that certain forms of gambling are harmless and permissible under the law, and in this viewpoint all but the overzealous and Puritancial will concur.

But there is a character of commercialized gambling which is in no sense a recreation or source of amusement for those who participate in such games and which the law denounces and prohibits. Hundreds of gamblers have made a fascinating living in this way; they pursue no vocation and, except their profits from gambling, have no means of livelihood, and they are not all adverse to crooked practices in order to obtain necessary funds.

Perhaps the most reprehensible feature of their operations is their constant effort to corrupt members of the Police Department. Time and again the department has been subjected to severe criticism because of an alleged "exposure" of intimate relations between police officers and gamblers and those engaged in commercialized vice; such alleged "exposures" for political purposes usually precede a municipal election.

The effect unfailingly works injury to the reputation of men in the Department in the estimation of many good citizens at home and abroad. Nearly every municipal election contest has been waged around such issues, and upon newspaper rumors and display headlines of such fictitious "exposures" the entire city administration has often been shattered.

Vice has also been one of the favorite themes for pre-election propaganda and for election campaigns, and from time immemorial the Police Department has been besmirched because of alleged collusion between the police and the vicious elements who thrive on commercialized vice.

The decent men of the Police Department—who make up the vast majority of the organization—have never approved of or profited by any of these practices. Nevertheless, they and their families have all suffered intensely because of the broadsides of condemnation hurled at the Department during alleged investigations and sensational publication of these matters.

The Department is greatly handicapped in the enforcement of the gambling laws by the construction placed upon the so-called "Bright" case. There is much difference of opinion as to what is the proper construction of the law under this decision when all of the facts are taken into consideration. There is one outstanding fact that Bright

was convicted on the uncorroborated testimony of one player in his game; that he, Bright, reserved to himself a profit beyond his winnings in the game. His conviction was sustained by the Court of Appeals, while in numerous cases notorious gamblers in this city have been presented before magistrates with evidence of greater volume and probative force than the record shows in the Bright case and went unwhipped of justice. If the decision in the Bright case is applied, without regard to the obiter dictum, any misinterpretation of the law concerning the application of that decision might be cleared up, on an appeal.

Another decision, recently rendered by a Judge of General Sessions, is to the effect that the uncorroborated testimony of a police officer in cases of prostitution shall not be accepted. Leaving out the question of the justice of this decision or the law—if this can be the law—no greater impediment to the enforcement of the law governing prostitution could possibly be devised. The crime itself is necessarily one which is committed with a single individual and, naturally, in most cases, corroboration is quite out of the question.

There is another phase of this problem which seems to require the bringing to court of a citizen whom a prostitute has solicited, or has had intercourse with. This may be the law but it works a great hardship on this Department and the procedure laid down is repugnant and exceedingly difficult to enforce.

One thing is certain, that so long as vice and gambling in a commercialized form is practiced in this city, the Police Department will be charged with the responsibility for its existence, and a countless number of good people whose judgment is prejudiced by the records of the past, will actually believe and continue to believe that the Police Department is in some inconceivable manner protecting this reprehensible business.

It has been the constant aim of the present police administration, now conducted by policemen, within the limitations of our resources and with all the power at our command, to stamp out commercialized vice and gambling in this city insofar as it is humanly possible to do so, and to unhesitatingly force the issue regardless of whom it may affect.

The program of the late Mayor Gaynor, "Outward Order and Decency," has been maintained and greatly amplified; we have not only succeeded in improving upon this program, but we have pursued these conditions into their every haunt and refuge until it can be easily proven to the satisfaction of any reasonable person that the city to-day is cleaner and freer of vicious conditions than ever before in its history. We are gaining ground every day and we still continue to progress so long as we have the proper support and cooperation of the magistrates and so long as men can be found in the Department who are willing to combat this evil.

Unfortunately, there has been more than a little friction between the police and the courts regarding these matters, so much that the members of the Department who are engaged in this particular work have been discouraged and they have bitterly complained about the failure of the courts to properly support their efforts. Granting that some of these men are overzealous and perhaps ambitious to make a record, it is obvious that the law of these cases as construed by the court are inadequate. We realize also, that even the most willing and best intentioned magistrate cannot always sustain the efforts of the police in some cases.

We are well aware that the Constitution and the law gives to the defendant the benefit of a doubt and holds that he is innocent until proven guilty. Nevertheless, the magistrate, in many cases, cannot fail to see in the circumstances presented to him, considered in connection with the conduct and record of the prisoner, that there is much justification for the action of the police, although the particular charge presented before him cannot be fully proven.

In such instances, many of the magistrates have from time to time, taken the opportunity to denounce the police in the presence of the prisoner at the bar and criminals of perhaps a most vicious and degenerate type who may be present in the court room. Some of the magistrates have gone so far as to direct the prisoner to bring suit against the officers for false arrest. The attitude of these magistrates has a tendency to discourage the men who are engaged in this necessary but very disagreeable work, at the same time widening the breach between the magistrates and the police. Perhaps one of the worst results of it is the encouragement that it surely gives to criminals

who belie e such dictum has the force of a legal decision and who witness the discomfiture of the police officers.

In this connection, may I not suggest that if the officer has made a mistake, that he acted in good faith, and at a considerable loss of time and active effort on his part to enforce the law. Furthermore, he is working in the interest of the public and not in his own personal interest, and usually carrying out the orders of his superior officers. If he should make a mistake and if his judgment, which must be formed in a hurry, is found to be wrong when subjected to calm judicial inspection, the officer should not be censured by the magistrate. Even judges fall into error after plenty of time for reflection and frequently find their action reversed by the higher courts. I believe the judge should call the erring officer aside and quietly instruct, advise or counsel him as to his future conduct; he might tell the officer in his chambers exactly what he thinks about it, or write to the Police Commissioner, who will be found ready and anxious to give every such complaint proper consideration and instruct the force accordingly.

In discussing some of these cases I might point out the difficulties under which the officers labor. For instance, he is in pursuit of a gang of crap shooters who are followers of a "fugitive game" played one night in a garage, a few nights later in a loft building, and a few nights later in a lodge room, all in different parts of the city. The officers know these men and exactly what they are doing. Finally they are located sufficiently in advance to make a raid. They summon assistance using the additional men to cover fire-escapes, stairways and skylights and then proceed to force the door. They find perhaps twenty or thirty men standing around a table usually covered with billiard table cloth and commonly known as a crap table; a pair of dice on the table and some money, or maybe they have had time to conceal the dice and money while the door was being forced. The hour is two o'clock in the morning. Surely, they are not there for the purpose of singing hymns, and yet with all these facts, the officer may still lack sufficient evidence to secure a conviction for gambling in such cases.

Perhaps the occasion may be a raid upon a gambling house where poker, black and white, and roulette are played, when the opportunity

is presented. The officer secures his information from the most reliable sources. He gathers his associates together and undertakes a raid, feeling certain that he will find the conditions exactly as they have been described to him. A "look-out" or perhaps somebody who is interested and has heard of the proposed raid, will tip off the gamblers and when the place is invaded sufficient evidence cannot be obtained.

Perhaps the case is that of a prostitute who is seen stopping a number of men on the street, and later the officer himself is solicited and goes with her to her apartment, and after the usual arrangement she offers herself for the purpose of prostitution. Corroboration cannot be obtained. The officer's evidence alone is not accepted and yet his prisoner may have a record and in appearance and gesture show plainly her character and calling.

Now, assuredly, the officer should be encouraged in his effort in these cases, and even if the prisoners must be discharged for lack of evidence, the judge might take occasion to severely reprimand them, and encourage the officer to continue to observe them, and, in the future, secure if possible, sufficient evidence to warrant a conviction. Such a procedure on the part of the magistrates will do much to keep up the morale of our plain clothes men and will not encourage violators of the law who have escaped punishment because of the "Scotch Verdict," which must be rendered in such cases.

A great advance has been made in the matter of bringing about closer cooperation and a better understanding between the magistrates and the police during the last ten years. The appointment of the Chief City Magistrate was, indeed, very fortunate. Mr. McAdoo had been Police Commissioner for two years, and during that period he found that there was a most lamentable lack of sympathy and cooperation between the courts of that day and the police administration as a whole. As a matter of fact, it was almost impossible to secure a warrant against poolrooms, gambling houses and houses of prostitution, because when application was made to the court, there was always somebody sufficiently interested in these places to see to it that they were advised of the forthcoming raid. Persons were brought to court and boldly discharged

regardless of the weight of testimony that was produced against them. In many instances, police officers were roundly abused for making these arrests and it may as well be stated here, that in some cases, the officers for their own reasons, were not always acting in good faith.

Judge McAdoo's experience along this line has made him splendidly efficient and sympathetic regarding what might be called proper cooperation between these two important branches of law enforcement in this city, and since his appointment as Chief City Magistrate, I am sure that he has done everything within his power to bring about a better understanding between the courts and the police. He has prepared and introduced in the legislature laws which are of great assistance in the handling of this work. He has also been very active in laying down court regulations and procedure which would work out to the greatest possible advantage to the public and to the men who are naturally interested in good government.

I do not desire to be considered at all critical of the courts in the discussion of these matters, but inasmuch as we are gathered here for the purpose of discussion, out of which we hope will come closer cooperation and better understanding, and eventually, new ideas and new laws governing these matters, some suggestions for possible improvement might not be amiss:

1. The court clerks exercise too great a power of discretion, prematurely deciding upon the form of affidavit in cases where they consider that sufficient evidence has not been obtained. His general conduct toward the arresting officer would indicate that he has been unduly influenced as is evidenced, for instance, in the many cases which he refuses to make out a lengthy complaint when that is necessary. He operates almost constantly along lines that will provide the least labor for himself. In these cases, when the officer refuses to sign what he considers an insufficient complaint, the clerk issues a Form O-14, marked "Insufficient Evidence." In nearly all of these cases the magistrate accepts the clerk's version of the case and discharges the prisoner without going into the matter thoroughly. If this form is necessary, at least the clerk should be

required to state fully the facts upon which he bases *his* decision or conclusion of "insufficient evidence" to support a complaint and prosecution. The magistrate should at least hear a brief version of the case in order to avoid misinterpretation, mistake or poor judgment on the part of the clerk.

2. In many cases affidavits are drawn in court under a section of the law other than the one for which the prisoner was held at the station house. This discretion is usually left to the clerk and has been much abused. An original charge should never be altered or changed except by direction of the Assistant District Attorney assigned to the Court or by the presiding magistrate.

3. The police have lost many cases because of a clerical error in the complaint, which may or may not be a deliberate act on the part of the clerk. In many of these cases Magistrates have refused to accept a new complaint from the officer, basing their refusal on the belief that if a new complaint were drawn, the defendant's liberty would twice be placed in jeopardy for the same offense.

4. Many magistrates grant adjournments, sometimes, it would seem, without sufficient cause. Not only is the patrolman or detective greatly inconvenienced, but the city is deprived of his services for the additional time so consumed. This practice is frequently resorted to, to discourage the prosecution. It is also the practice to secure adjournments in order that the defendant may not be tried by certain magistrates.

5. The Magistrates should adopt a uniform procedure in vice and gambling cases. Some magistrates will, immediately upon reading the officer's affidavit, discharge the prisoner in certain violations of the vice and gambling laws without even hearing any testimony.

6. To prevent contact of lawyers and runners with clerks to discuss the form of affidavits to be prepared, all persons not having immediate business with the court should be excluded from within the railing.

7. Clerks and other attaches of courts should not, for obvious reasons, be assigned to the court whose territory comprises their home district.

I cannot refrain from again expressing my belief that there should be established a special court for the trial of all cases coming under the general heading of vice and gambling.

The greatest possible benefits have resulted through the specialized courts already established. Complaints for violation of the Motor Vehicle Law and traffic regulations are now heard almost exclusively in the Traffic Courts established for that purpose, and there has been a vast improvement in the disposition of these cases. A special court has also been established for the hearing of domestic relations cases; there is a Women's Court, a Children's Court and other specialized courts and in each instance pronounced improvement has been recorded.

A special court for the handling of vice and gambling cases would result in a complete record of every person in this city charged with such offenses. When habitual offenders are brought before a court of this kind they will be readily recognized; no matter what name they give and, of course, their finger print and other records can be obtained from the record of the court. The law will be uniformly enforced and the judge specializing in these cases will propose many amendments to the law and his views will receive consideration.

Under the present system, it is the custom of prisoners charged with such offenses to provide themselves with sufficient lawyers who will obtain many adjournments and needlessly waste the time of our limited number of officers engaged in this work. It is common practice for them to secure an adjournment in order that their case may be presented to a magistrate who may occupy the court at a later date under the belief that they may be dealt with more leniently. There can be little doubt that a specialized court will result in a more efficient and uniform enforcement of these laws.

I am also convinced that there should be a permanent standing committee consisting of a certain number of police magistrates

Judges of Special Sessions, members of the Police Department and of the District Attorney's offices, meeting at stated times for the purpose of discussing court procedure and practices to the end that closer and more efficient cooperation between all branches of the law enforcement organizations may be effected.

Many of our present laws for the suppression of vice and gambling are obsolete or ambiguous, and thorough cooperation between the bench and Bar Association and public opinion should be organized for their repeal, amendment or enactment of new laws, if necessary. While considerable improvement has been made in recent years in the suppression of vice and gambling, it must be confessed that permanent control of these offenses is not conducted with anything approaching the degree of efficiency toward which we should direct our attention.

Much of the time of policemen having business with the courts, district attorney's offices and grand juries seems to be wasted, and there is no doubt that these conditions can be better regulated to the advantage of all concerned.

I think we are all convinced that His Honor, the Mayor, has afforded us an excellent opportunity to arrive at a better understanding regarding all of these matters, and it seems to me that we should not leave this meeting to-night without taking some definite action for the better organization and cooperation of the law enforcing organizations of this city. Necessary committees should be appointed and our united efforts should result in great benefit to all concerned. The Police Department will gladly enter into any conference or movement which will accomplish the results so much desired.

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